



The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner



January 23, 2006

The Honorable Lawrence C. Ross, Chairman
N.H. House of Representatives
Science, Technology and Energy Committee
Legislative Office Building, Room 304
Concord, New Hampshire 03301

Re: HB 1431- An Act Relative to Air Permit Applications

Dear Chairman Ross and Members of the Committee:

Thank you for the opportunity to provide testimony regarding HB 1431. The Department of Environmental Services (NHDES) is the duly appointed administrative agency responsible for the issuance of air permits for stationary sources located in NH under the authority of RSA 125-C and the federal Clean Air Act. As proposed, HB 1431 would require several significant revisions to the current air permitting process. By way of background, NHDES would like to advise the Committee that there are approximately 480 sources in NH that hold air permits including electric power generating stations, municipal waste combustors, municipalities, and a wide variety of large and small manufacturing operations. Typically, DES acts upon approximately 150 air permit applications per year. These applications include the renewal of existing permits, modifications to existing sources and requests to construct new sources. In its processing of these applications, NHDES strives to conduct comprehensive air quality impact reviews that provide an opportunity for public participation, while meeting the business needs of the regulated community in terms of timeliness and operational flexibility.

Under the current air permit process, NHDES undertakes several steps to ensure that the public and host community is involved in the permitting process. Under our administrative rules, NHDES forwards a copy of the entire application package to the host community upon deeming it complete. This is not a specific requirement of either state or federal laws but a practice NHDES adopted as an administrative rule for the express purpose of notifying towns of NHDES activities in their community. This action generally occurs prior to NHDES commencing its technical review. Upon completion of a technical review, NHDES will issue a public notice of its intent to issue or deny a permit to a particular source. This public notice will be published once in a newspaper of statewide circulation (as required by state and federal law) and a newspaper of local circulation (as required by regulation). This notice provides the opportunity for any interested party to submit written comments and/or request a public hearing. If such a hearing is requested, NHDES will issue a second notice indicating the date, time and location of the public hearing (NHDES has on occasion prescheduled a public hearing and provided notice of this public hearing in the initial notice for public comment). By way of public policy, NHDES has historically scheduled permit related hearings in the evening hours in the location of the host community. This policy will continue in the future. NHDES believes that the above laws, administrative rules and practices serve the interest of the municipality and the general public, provide sufficient opportunity for public comments, and provide the local municipality with timely notification of potential NHDES actions within the community.

With respect to the specific language of HB 1431, NHDES is most concerned with the provision of paragraph II(a) which requires NHDES to hold a public hearing on each permit application it receives. Our

first concern is whether this mandatory hearing would be in addition to the opportunity for a public hearing on draft permits that NHDES currently provides. If it is intended to replace this requirement NHDES notes that federal rules and procedures requires that NHDES provide an opportunity for a public hearing on a draft permit in certain cases such as Title V Permits, Synthetic Minor Permits and New Source Review Permits in order for the permits to be considered "federally enforceable". Therefore, in some cases, NHDES would be required to hold two public hearings for a single permit application.

A second concern with this provision is simply resource related. As noted above, NHDES processes approximately 150 permit applications on an annual basis so this requirement would dictate that at a minimum NHDES conduct approximately 150 public hearings on an annual basis. This would represent a very significant increase over the typical year of about 5 -10 permit related hearings. NHDES believes that there would be a significant fiscal impact on the air permit program by this requirement. NHDES did not receive a request to prepare a fiscal for this bill but estimates the costs to be approximately \$ 370,500 per year. As a final thought, NHDES is concerned that a number of these mandatory hearings would be lightly attended by interested parties or possibly not attended at all.

Paragraph II(d) would require that NHDES not accept an application "until the applicant provides certification, signed by the board of selectman, mayor, city council, or county commissioner that the application complies with all local zoning and planning laws and regulations". NHDES believes that these requirements are unnecessary because there is little overlap between NHDES air permit requirements and local land use requirements and because applicants are already required to obtain all federal, state and local approvals before constructing air pollution facilities. All of these permitting and approval processes move along separate, parallel tracks, and the fact that NHDES has or has not issued an air permit should have no effect on whether the proposed facility meets the town's ordinances, building or zoning codes. Further, a NHDES air permit does not authorize a company to build a facility that the local zoning ordinance prohibits.

As a final thought, NHDES would also like to inform the Committee that any decision to issue an air permit may be appealed by an aggrieved party to the Air Resources Council. This oversight body is made up of various representatives of the general public, environmental advocates, medical professionals and industry. NHDES believes that this adds an additional layer of protection for the environment, the public and industry.

NHDES supports any effort to help New Hampshire identify and address important environmental health concerns within the State in order to assure that public health is adequately protected. NHDES would welcome the opportunity to work with the Science, Technology and Energy Committee on this legislation.

Thank you for the opportunity to offer our testimony on HB 121. Please feel free to call Robert Scott Air Resources Division, Director at 271-1380, Craig Wright, Stationary Source Management Bureau Administrator at 271-6791, or me at 271-3503 if you have any questions or would like further information.

Sincerely,

for Michael P. Nolin
Commissioner

Fiscal Impact Calculation Assumptions:

Staff (per hearing): Hearing Officer, 4 Staff (Technical and Support Staff)

Hours (per hearing per staff): 6 hours (includes travel and hearing time)

Hearing preparation time (per hearing): 8 hours total

Staff Cost (per hour): \$ 65/hour including salary, benefits and indirect costs

Annual Hours to Conduct 150 Permit Application Hearings:

Hearing time = 5 Staff x 6 hours x 150 hearings = 4,500 hours

Hearing prep time = 8 hours x 150 hearings = 1,200 hours

Total time = Hearing time + Hearing prep time = 4,500 + 1,200 = 5,700

Estimated Costs:

5,700 hours/year x \$ 65/hour = \$ 370,500/year